

CONTRACT:
STATUTE OF FRAUDS:

Contract for the sale of Goods, Wares
and Merchandise for the price of \$30.00
or more, not valid unless the parties
thereto comply with the provision of the
Statute of Frauds, (Sec. 3355 R. S. Mo.
1939)

November 30, 1950

Honorable C. H. Hill
Superintendent of Industries
Missouri State Penitentiary
Jefferson City, Missouri



Dear Mr. Hill:

Your letters of recent date requesting an opinion of this
office reads as follows:

LETTER NO. I

"This confirms our phone conversation of this
morning, November 4, 1950 relative to the twine
contract between Henry F. Byrne, Superintendent
of Industries and James A. Flanagan, Jr., Special
Problem Engineer, Yacht Mayme, 1300 Maine Avenue,
South West, Washington, D. C. for 400 metric tons
of first quality sisal binder twine.

"This twine has been manufactured and has been in
our warehouse since 1947. For the past nine months,
I'd say on eight occasions we have asked Mr. Flanagan
for shipping instructions and tags so as to ship this
twine out of our warehouse as per contract. Up to now
we have been unable to get shipping instructions or
tags to execute same. With the same taken there was
no down payment or contract secured by Mr. Byrne from
Mr. Flanagan for this large sum of merchandise and
money.

"We now feel we cannot hold this twine any longer and
are therefore asking you if it would be permissable to
cancel this contract with Mr. Flanagan.

"Please return the enclosed contract and letters with
your reply. Thank you kindly."

Hon. C. H. Hill

LETTER NO. II

"Have your letter of November 21, 1950 - subject binder twine. All of the information relative to the 500 metric tons binder string for Mr. James A. Flanagan, Jr. was the telegram and all correspondence referring to that order accompanied our original letter to Mr. Waldo P. Johnson. This is all the information we had concerning the above order.

"We notified Mr. Flanagan this week by a registered letter cancelling his order for 500 metric tons binder string. A copy of this letter is attached.

"When you are through with the correspondence concerning this order please return to this office. Thanks very much."

In the case of Pratt v. Miller, 109 Mo. 78, 1. c. 81-82, 84 and 90, our Court in a similar case said:

"Plaintiffs' cause of action set out in the petition is: That the defendants ordered and requested plaintiffs to manufacture for and furnish to them divers goods, wares and merchandise, being boots and shoes, of which an itemized account, the price amounting to \$265.45, is filed; that plaintiffs accepted said order, manufactured said goods, shipped and tendered them to defendants, who refused to pay for them. The defendants' answer was a denial of the material allegations of the petition, a plea of the statute of frauds; a warranty of quality and breach thereof.

"The question to be determined in this case is, whether the contract in question is a contract for the sale of goods, wares and merchandise, or a contract for work and labor to be done and materials to be furnished. If the former, it is within the statute, and the plaintiffs cannot recover. If the latter, it is not within the statute, and they may. The Kansas City court of appeals,

in effect, held that the contract belonged to the latter class and was not within the statute, without discussing the question, but simply citing Browne on the Statute of Frauds, section 308 (a), in support of its conclusion.

***** The undisputed facts in this case show that this contract was a sale of goods, wares and merchandise within the meaning of the statute, and not being in writing the demurrer to the evidence ought to have been sustained."

The statute under which the above case was brought about (Section 2514, R. S. Mo. 1879) is the same as the statute of today, Section 3355, R. S. Mo. 1939, and reads as follows:

"No contract for the sale of goods, wares and merchandise for the price of thirty dollars or upward, shall be allowed to be good, unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing be made of the bargain, and signed by the parties to be charged with such contract, or their agents lawfully authorized."

Purchase of this amount of merchandise brings it within Section 3355, supra, and in the case of Delventhal et al. v. Jones, 53 Mo. 460, l. c. 462 and 463 the Supreme Court said that in order to be bound on such a contract the buyer shall accept part of the goods so sold, and actually receive the same or give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing be made of the bargain and signed by the parties to be charged with such contract, or agents lawfully authorized; and unless one or more of these acts are performed and complied with, then the contract of sale is void.

Hon. C. H. Hill

From the communications received from Mr. James A. Flanagan, Jr., and from your letters asking for an opinion we are unable to find wherein any one or more of the requirements set out in Section 3355, supra, have been complied with and we are unable to find wherein, the Missouri State Twine Company would be bound on an offer of purchase and wherein they would be prevented from disposing of the stock or binder twine manufactured in compliance with such order when the parties had not complied with the requirements of the statute above quoted.

CONCLUSION

It is, therefore, the opinion of this department that the Missouri State Twine Company is at liberty to disregard the so-called purchase contract for 500 metric tons of first quality sisal binder twine ordered by James A. Flanagan, Jr., Special Problem Engineer, Washington, D. C., and to dispose of whatever stock they have on hand which was manufactured in compliance with the order.

Respectfully submitted

GORDON P. WEIR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
ATTORNEY GENERAL

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